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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA, : Criminal Action No.
versus : 1:18-CR-89
JERRY CHUN SHING LEE, :
Defendant. : November 2, 2018

The above-entitled Status conference was heard by the Honorable T.S. Ellis, III, United States District Judge.

A P P E A R A N C E S

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Eastern District of Virginia
401 Courthouse Square
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1 P R O C E E D I N G S

2 (Court proceedings commenced at 4:25 p.m.)

3 THE COURT: The record will reflect that the
4 courtroom is now closed.

5 THE DEPUTY CLERK: United States of America versus
6 Jerry Chung Shing Lee. Criminal Case No. 1:18-CR-89.

7 Counsel, please note your appearance for the record.

8 MR. HAMMERSTROM: Good afternoon, Your Honor. Neal
9 Hammerstrom for the record, along with Adam Small and Patrick
10 Murphy.

11 MR. MACMAHON: Good afternoon, Your Honor. Edward
12 MacMahon and Nina Ginsberg for Mr. Lee. I don't know if he's
13 here or not.

14 THE COURT: Is he here?

15 THE MARSHAL: He's here. He's just coming up the
16 elevator.

17 THE COURT: That's fine. We'll await his arrival.

18 (A pause in the proceedings.)

19 THE COURT: I could not be confident that it
20 wouldn't be necessary to disclose materials that would have to
21 be classified so that's why I closed it.

22 If it turns out, I was wrong we can put the
23 transcript on the public record.

24 Let me tell you -- I'll repeat it when he arrives,
25 when the defendant arrives.

1 MR. MACMAHON: Your Honor, we don't have any
2 objection to -- I know you have a full docket.

3 THE COURT: Yes, but it is important for Mr. Lee.
4 But, it's really an administrative matter that I wanted to
5 deal with. You-all submitted a proposed schedule, which I
6 couldn't accept, because it has me having a Section 6 hearing
7 several days before trial. And that's not good.

8 I need longer than that in case I have to consider
9 some matters. And you need some time too because after a
10 Section 6 determination there may be some changes made to
11 classified information that you need to take into account in
12 your decision on how to try the case.

13 What's the holdup here? Will you knock on the door,
14 please? No, she's going to do it.

15 MS. GINSBERG: I think they said they had to bring
16 him up in an elevator.

17 THE COURT: Yes. We have elevators there. That's
18 why we built the courthouse this way.

19 (Discussion off the record.)

20 THE COURT: All right. We're back on the record.
21 The record will reflect that Mr. Lee is now present in the
22 courtroom.

23 My reason for having this hearing on short notice --
24 and I was reluctant to do it -- is that the schedule that the
25 parties submitted resulted in my having to have a Section 6

1 hearing only a few days prior to trial.

2 Do you see that Mr. Hammerstrom? You've got it in
3 front of you.

4 I didn't find that to be palpable. I need more time
5 before trial in the event that I have to think about something
6 or that there's some other glitch between -- some other
7 problem between -- I needed time. So we need to adjust that.

8 The real problem, Mr. Hammerstrom that causes this
9 -- I don't mind the government having two opportunities to
10 produce material and then that gives the defense two
11 opportunities to make their filings, because the government
12 has a problem producing all this stuff.

13 Can we change those earlier dates, Mr. Hammerstrom
14 so that the government produces its material earlier? Because
15 that's the real problem in this CIPA schedule, isn't it?

16 MR. HAMMERSTROM: The dates look pretty compacted,
17 though, Your Honor. I am trying to see if there is some room
18 to move some of these up.

19 THE COURT: What's the trial date now?

20 MR. HAMMERSTROM: It's February the 12th.

21 THE COURT: Let me see the book. February the 12th.

22 MR. HAMMERSTROM: Yes, Your Honor.

23 THE COURT: And what's the date of the CIPA 6
24 hearing?

25 MR. HAMMERSTROM: The 6C is the 8th of February.

1 THE COURT: It's actually a weekend. There's a
2 weekend there. What did you say, Mr. Hammerstrom; what date,
3 February?

4 MR. HAMMERSTROM: 8th.

5 THE COURT: That's a Friday and then there's a
6 weekend and then Tuesday is the trial.

7 (A pause in the proceedings.)

8 THE COURT: I think I would be satisfied, if counsel
9 agree, and I don't think there is any speedy trial problem, if
10 I move the trial to the 19th of February.

11 MR. MACMAHON: Your Honor, if I may, I agree with
12 you about how -- the problem we're trying to deal with. We
13 are dealing with a lot of information that we are going to
14 have to try to disclose. We understand this schedule is
15 probably very tight. It's going to slip a little bit. I
16 think we all see that. I don't know if you want to -- if
17 that's as much as you want to move it or if you want to move
18 it another week so we can get all this done. It's just that
19 --

20 And we have a discovery motion in front of you next
21 week, but I think we'll highlight for you again what we're --
22 you and -- what all of us are up against and to try to get
23 this case scrubbed through the CIPA process before it starts.
24 I don't think anybody shies away from it.

25 THE COURT: Mr. Hammerstrom I can tell that you --

1 and I'm sensitive to the fact that you have a number of
2 clients. And the first question I had is whether you could
3 produce this material earlier. I take it you've explored
4 that.

5 MR. HAMMERSTROM: We have, Your Honor. And this is
6 an ongoing problem just because of the volume of evidence
7 we're dealing with over an investigation lasting so many
8 years. I would propose we move the trial date out a couple of
9 weeks. I think that will give us some breathing room we
10 probably really need.

11 THE COURT: All right. Suppose we move the trial
12 date then to February the 26th. That would -- is that enough
13 or should we move it instead to March the 5th?

14 MR. HAMMERSTROM: March 5th would be better, I
15 think, from the standpoint of problems that I think probably
16 surely to arise with some of the massive discovery we're
17 dealing with.

18 THE COURT: All right. Let me ask your colleagues
19 on the other side there. Do you agree?

20 MR. MACMAHON: Yes, Your Honor. We would agree to
21 that. We think we're going to have a lot of work to do in
22 this case and the extra time will assist. So we would not
23 object to that.

24 THE COURT: Propose I enter an order that says that
25 the previously scheduled trial date is postponed until March

1 6th at 10 a.m., with the agreement of all counsel, because on
2 the grounds that they need time to prepare and digest the
3 volume of material that is going through the CIPA process.

4 MR. MACMAHON: There will be no objection to that
5 order from the defense, Your Honor.

6 THE COURT: And Mr. Hammerstrom.

7 MR. HAMMERSTROM: That will be fine, Your Honor.

8 THE COURT: And is there any problem you see with
9 the Speedy Trial Act, Mr. Hammerstrom?

10 MR. HAMMERSTROM: No, Your Honor, that was addressed
11 at arraignment. I think we're fine.

12 MR. MACMAHON: You've already determined the case to
13 be complex. If you need a -- if --

14 THE COURT: Well, I'll repeat that in this order.

15 MR. MACMAHON: But if the Court wants to, Mr. Lee
16 would be prepared to sign a waiver for that time as well if
17 that's necessary.

18 THE COURT: All right. Thank you. All right. It's
19 unfortunate that it was necessary to do this, but it was
20 necessary and it's better to do it now than later. But let's
21 get it done, because, as you know, I met today with Judge
22 Bryan and he hated continuances and delays of trial dates more
23 than anything else.

24 We reminisced together about times when we would set
25 a trial date and counsel -- this is in civil cases -- and

1 counsel would say, Gee whiz I can't do it then, I can't do it.
2 And Judge Bryan, instead of moving it back, moving the date
3 later, would move it the other way. And people quickly got
4 the message that they were better off making do with what they
5 had. You-all remember some of that yourselves.

6 MR. MACMAHON: Very well, Your Honor.

7 MR. HAMMERSTROM: Yes.

8 THE COURT: Thank you. I'm sorry to have made this
9 on short notice, but it's important.

10 Yes, Mr. Hammerstrom.

11 MR. HAMMERSTROM: Your Honor, on the proposed dates
12 we had for the revised scheduling order, there were three
13 dates that we need times from the Court, times for the
14 hearing. That's the February 1st, February 8th, and December
15 21st hearings.

16 THE COURT: All right. I'll look at that and I'll
17 issue -- the order I issue will include those times.

18 MR. HAMMERSTROM: Great. Thank you, Your Honor.

19 THE COURT: All right. I thank counsel for your
20 appearance today on short notice. I'm going to recess. I
21 don't think anything classified came up.

22 So I will order a transcript of this prepared and
23 place in the public record.

24 And ask the marshals to open the courtroom and let
25 the folks back in.

1 Court stands in recess.

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3 **(Proceedings adjourned at 4:38 p.m.)**

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CERTIFICATE OF REPORTER

I, Tonia Harris, an Official Court Reporter for
the Eastern District of Virginia, do hereby certify that I
reported by machine shorthand, in my official capacity, the
proceedings had and testimony adduced upon the Status
conference in the case of the **UNITED STATES OF AMERICA**
versus JERRY CHUN SHING LEE, Criminal Action No.

9 1:18-CR-89, in said court on the 2nd day of November, 2018.

I further certify that the foregoing 10 pages constitute the official transcript of said proceedings, as taken from my machine shorthand notes, my computer realtime display, together with the backup tape recording of said proceedings to the best of my ability.

15 In witness whereof, I have hereto subscribed my
16 name, this November 14, 2018.

Tonia M. Harris
Tonia M. Harris, RPR
Official Court Reporter